



Date: December 6, 2013

To: Thomas J. Bonfield, City Manager
From: Patrick W. Baker, City Attorney
Subject: PSNC Franchise Agreement

Executive Summary

The City of Durham granted a 30-year franchise known as the “Public Service Co. of N.C., Inc. Company Gas Franchise” effective November 19, 1981. This franchise primarily granted authority to operate within the City while regulating excavations and repair within public rights of way. The former franchise agreement with PSNC initially had an expiration date of September 30, 2011; however that expiration date was extended until September 30, 2012. Prior to the expiration of the former franchise agreement, both PSNC and the City agreed to continue to operate under its terms until negotiations regarding the terms of a new franchise agreement could be completed.

Recommendation

The Department of Public Works and the City Attorney’s Office recommends that the City Council hold a public hearing and that it adopt an ordinance granting Public Service Company of North Carolina Incorporated, a Subsidiary of SCANA Corporation (“PSNC”) a franchise to continue its operations within the City’s right of way (“PSNC Gas Franchise”).

Background

By authority of N.C.G.S. 160A-319, cities have the authority to grant franchises for the operation of various enterprises including those for gas transmission and distribution systems. The City of Durham granted a 30-year franchise known as the “Public Service Co. of N.C., Inc. Company Gas Franchise” effective November 19, 1981. The existing franchise primarily grants authority to operate within the City while regulating excavations and repair within public rights-of-way. It also provides some regulation of the location of facilities, the quality of services, including emergency service, and provides for notice to the City of proposed rate changes while allowing the City access to company records. Despite many of the provisions within the franchise, the North Carolina Utilities Commission’s authority supersedes the City’s authority in a number of these areas. Nevertheless, the City is afforded certain liability protections, and the authority to order facility relocations for public improvements under the franchise.

Issues/Analysis

The existing franchise agreement with PSNC expired on September 30, 2012. However, both PSNC and the City agreed to operate under the terms of the former agreement pending the

conclusion of negotiations on a new agreement. The parties have concluded those negotiations and the new PSNC Gas Franchise is presented for public hearing and consideration by City Council. Durham City Charter § 69 requires that a franchise be granted through passage of an ordinance.

Alternatives

1. Pass an ordinance granting PSNC a new franchise. The PSNC Gas Franchise provides rules and regulations applicable to PSNC's use of the City's rights of way and affords protections to the City and its residents.
2. Do not extend a franchise to PSNC. This would not prevent PSNC from operating within the City as it has authority to do so from the North Carolina Utilities Commission. Any benefits afforded by the PSNC Gas Franchise would be lost. However, Durham would continue to realize utility franchise taxes and would retain nearly all of its authority to regulate construction and repairs within the City rights of way. This alternative is not recommended.

Financial Impact

Regardless of the status of the City's franchise agreement with PSNC, state law requires that a utility's franchise tax (based on a percentage of gross receipts) be collected by the state and that the taxes collected on receipts attributed to customers within Durham be paid to the City. There are, however, key issues concerning the cost of utility relocations due to public projects, indemnification, repairs to streets and rights-of-way, and other matters that are expected to have a positive financial impact on the City. Failure to award a new franchise could potentially have some limited negative financial and service impacts on the City.

SDBE Summary

The SDBE Summary is not applicable to this item.